

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Project Management Guidance Letter Number 5, Disclosure of Lobbying Activities

1. On October 23, 1989, the President signed into law the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 ("the Act"). Section 319 of the Act amends title 31, United States Code, by adding a new Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 1352 affects, among other things, Federal contracts, grants, and cooperative agreements, that are entered into after December 23, 1989.

2. As pertaining to the Corps of Engineers' Civil Works program the law specifies that:

a. No Federal appropriated funds may be expended by the recipient of a Federal contract, grant, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with, among other things, the awarding of any Federal contract, the making of any Federal grant, or the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of such contracts, grants or agreements.

b. Each person who requests or receives from an agency a Federal contract, grant, or cooperative agreement shall file with that agency a certification, set forth in Enclosure 1, that the person has not made, and will not make, any payment prohibited by paragraph 2.a.

c. Each person who requests or receives from an agency a Federal contract, grant, or a cooperative agreement shall file with that agency a disclosure form, set forth in Enclosure 2, if such person has made or has agreed to make any payment using any funds other than Federal appropriated funds for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with such contracts, grants or agreements.

3. The prohibition on the use of appropriated funds, does not apply in the case of a payment of reasonable compensation made to an employee of a person if the payment is for agency and legislative liaison activities not directly related to a specific contract, grant or agreement. Providing any information requested by Congress or an Agency is allowable at any time.

4. For the purpose of understanding the application of this law:

a. "Influencing or attempting to influence" means making any communication to or

appearance before any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action with the intent to sway, move or impel such individual to do something.

b. "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, but excluding an Indian tribe, or Indian organization, with respect to expenditures specifically permitted by other Federal law.

c. Recipient of Federal contracts, grants or cooperative agreements includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, or cooperative agreement.

5. Effective immediately, in accordance with paragraph 2.b., all unexecuted local cooperation agreements (LCA's), for all specifically authorized and Continuing Authorities projects, together with all, Feasibility Study, 204, 215 Agreements, and Water Supply and Recreation contracts, will require an accompanying signed certificate in accordance with Enclosure 1, and if applicable, a completed Disclosure Form in accordance with Enclosure 2. These forms must be thoroughly discussed with the sponsors prior to submission of the final agreement to Headquarters or in the case of Continuing Authorities, prior to final approval of the LCA. Signed certificates and, if necessary, forms will be attached to the Cooperative Agreement prior to execution by the appropriate Department of the Army official and must be kept on file by the FOA's for later submission to Headquarters, if requested.

6. Further discussion of this law and its implementation can be found in the Federal Register Vol. 54 No. 243, December 20, 1989, pages 52306 to 52332. Any questions should be directed to CECW-LN.

FOR THE DIRECTOR OF CIVIL WORKS:

Encls

BORY STEINBERG
Chief, Project Management Division
Directorate of Civil Works

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making Of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Sponsor